

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HELAYNE SEIDMAN,

Plaintiff,

- against -

CLOUD TIGER MEDIA, INC.,

Defendant.

Docket No. 17-cv-03396

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Helayne Seidman (“Seidman” or “Plaintiff”), by and through her undersigned counsel, as and for her Complaint against Defendant Cloud Tiger Media, Inc. (“CTM” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of two copyrighted photographs of 11-year-old Ciro Ortiz giving advice to subway riders, owned and registered by Seidman, a New York City-based photojournalist. Accordingly, Seidman seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.* This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or is doing business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Seidman is a professional photojournalist in the business of licensing her photographs to online, print, and television stations for a fee, having a usual place of business at 16 Saint Marks Place, Apt. 4B, New York, New York 10003. Seidman's photographs have appeared in many publications around the United States.

6. Upon information and belief, CTM is a corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 230 West 41st Street, 15th Floor, New York, NY 10036. At all times material hereto, CTM has owned and operated a website at the following URL: www.upworthy.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. On December 11, 2016, Seidman photographed 11-year-old Ciro Ortiz on a subway platform giving advice to subway riders (the "Photographs"). A true and correct copy of the Photographs is attached hereto as Exhibit A.

8. Seidman then licensed the Photographs to the New York Post. On December 11, 2016, the New York Post ran an article that featured the Photographs on its web edition entitled, *Subway riders are turning to this 11-year-old shrink for advice*. See <http://nypost.com/2016/12/11/subway-riders-are-turning-to-this-11-year-old-shrink-for-advice/>. Seidman's name was featured in a gutter credit identifying her as the photographer of the

Photographs. True and correct copies of the Photographs in the article are attached hereto as Exhibit B.

9. Seidman is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

10. The Photographs were registered with the U.S. Copyright Office and given Copyright Registration Number VA 2-037-048.

B. Defendant's Infringing Activities

11. Upon information and belief, on or about December 20, 2016, CTM ran an article on the Website entitled *Subway riders in New York are paying \$2 for 5 minutes of advice from an 11-year-old*. See <http://www.upworthy.com/subway-riders-in-new-york-are-paying-2-for-5-minutes-of-advice-from-an-11-year-old>. The article prominently featured the Photographs. A true and correct copy of the article is attached hereto as Exhibit C.

12. CTM did not license the Photographs from Plaintiff for its article, nor did CTM have Plaintiff's permission or consent to publish the Photographs on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST CTM)
(17 U.S.C. §§ 106, 501)

13. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-12 above.

14. CTM infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. CTM is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photographs.

15. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

16. Upon information and belief, the aforementioned acts of infringement by CTM have been willful, intentional, and purposeful, in disregard of and with indifference to Plaintiff's rights.

17. As a result of Defendant's infringement of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to recover her damages and Defendant's profits pursuant to 17 U.S.C. § 504(b).

18. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photographs, pursuant to 17 U.S.C. § 504(c).

19. Plaintiff further is entitled to her attorney's fees and full costs pursuant to 17 U.S.C. § 505.

20. Defendant's conduct, described above, is causing and, unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant CTM be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement

of Plaintiff's Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;

3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be award her costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
May 8, 2017

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